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No. 10-841

Supreme Court, U.S.
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In The

Supreme Court of the United States

VAUGHAN ROOFING & SHEET METAL, INC.,

Petitioner,

vs.

ANTONIO GARCIA RODRIQUEZ,

Respondent.

On Petition For A Writ Of *Certiorari*
To The Court Of Appeal Of
Louisiana, Third Circuit

BRIEF IN OPPOSITION

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RESPONSE TO QUESTION PRESENTED

No. The IRCA does not preempt an award of workers' compensation in Louisiana to an illegal alien, as the Louisiana Workers' Compensation Act is silent as to alien status and does not meet the criteria previously set forth by this Court in immigration preemption cases. 8 U.S.C. § 1324a provides penalties for employers who hire undocumented workers, not penalties for undocumented workers who are hired as employees.

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RESPONDENT'S OPPOSITION TO QUESTION PRESENTED.

As required by S.Ct. R. 15 respondent notes objection to the misstatements of law contained in Petitioner's Question Presented. First, the statement "Illegal aliens are prohibited from working in the United States by the Immigration Reform and Control Act of 1986 ("IRCA"), 8 U.S.C. § 1101, et seq., especially at § 1324a," is an incorrect summation of the section. That section deals specifically with employing illegal aliens; not whether it is illegal for an alien to be employed. The section is written from the viewpoint of the employer. The illegal action contemplated by the statute is the employment of illegal aliens. The statute does not say that an illegal alien cannot work; it says they shall not be employed by one who is hiring. The difference is essential here.

Secondly, Petitioner's Question Presented misstates the application of workers' compensation law in the United States. The statement "in all 50 states a legally employed worker who is injured on the job is entitled to workers' compensation benefits," is not a legal truth.[2] Louisiana, for example, excludes sheriff's deputies in some parishes from coverage

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[2] Respondent will argue Petitioner's standing to represent all 50 states in another section of this Response Brief, but notes here that the presumption that workers' compensation is provided to all "legal" employees "in all 50 states" is itself flawed, aside from the standing implications.

under workers' compensation.[3] Louisiana's workers' compensation statutes also exclude domestic workers, real estate agents, musicians, corporation owners, some independent contractors and some owner operator truck drivers.[4]

By further example, South Carolina does not require workers' compensation insurance for employers with less than four (4) full time employees.[5] So, it would be a non-truth to say that an injured "legal" South Carolina employee of an employer with under four (4) employees would be entitled to workers' compensation benefits under that state's scheme. These are merely two examples, and do not illustrate the entire breadth of Petitioner's misstatement.

RESPONDENT'S OBJECTION TO PETITIONER'S STATEMENT OF THE CASE.

As required by S.Ct. R. 15, Respondent notes objection to factual assertions in Petitioner's Statement of Facts regarding Vaughan's employment relationship with Rodriquez. Vaughan states that it "did not know of Rodriquez' illegal status and was not involved in any way in his hiring or in any aspect of his work."[6] The trial testimony on this issue showed

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[3] La. R.S. Ann. 23 § 1034(B).

[4] La. R.S. Ann. 23 § 1035 Employees Covered.

[5] S.C. Code Ann. @ 42-1-360.

[6] Writ of *Cert.* pg. 3, first paragraph.

that Vaughan had a supervisor on the worksite everyday that did not speak Spanish. The supervisor would communicate with the one member of the crew that spoke English. The supervisor would count the roofing tiles after each job so as to determine how much the crew had earned for the day. The supervisor on the site, employed by Vaughan had hiring and firing power. This testimony was undisputed at the trial level.

Respondent also takes issue with Petitioner's use of the term "illegal alien" as it is used by the Petitioner in an attempt to classify all undocumented workers in this country regardless of circumstance or status under immigration guidelines.

In addition to the facts provided by Petitioner, Respondent provides the following. Rodriquez came to the United States on a work visa, but that at the time of the accident the visa had expired. Neither Stanton, the direct employer, nor Vaughan, the statutory employer and Petitioner, asked Rodriquez for proof of citizenship or attempted to verify his work eligibility prior to or during his employment. These facts were uncontested at trial.

LOUISIANA STATE LAW SHOULD BE APPLIED IN THIS MATTER.

Petitioner invokes this Court's jurisdiction through 28 U.S.C. § 1257(a); alleging preemption as

a defense against having to pay workers' compensation benefits to an illegal alien under the Louisiana Workers' Compensation Act ("LWCA"). The federal defense of preemption does not convert this case to one that "arises under" a federal question, and Petitioner has not alleged a federal question. Therefore, under the Federal Rules Decision Act, specifically, 28 U.S.C. § 1652, Louisiana state law will apply in this matter.

INTRODUCTION.

This Writ of *Certiorari* should be denied on a myriad of grounds. Petitioner cannot overcome the procedural obstacles presented by this Writ and briefly outlined in the sections below. A more lengthy discussion of the substantive legal issues follows.

I. PROCEDURAL OBSTACLES PROHIBITING GRANT OF *CERTIORARI* REVIEW.

A. PETITIONER FAILED TO COMPLY WITH FEDERAL NOTICE REQUIREMENTS.

Petitioner failed to comply with Fed. Rules Civ. Proc. R. 5.1 requiring the petitioning party to serve notice of a constitutional question that involves a state statute where the state is not a party to the action. Because the Petitioner has failed to comply with Rule 5.1, the State of Louisiana is not a party to this action and therefore cannot assert the defense of Sovereign Immunity granted to the state of Louisiana

under the 11th Amendment to the United States Constitution. The 11th Amendment bars suits in federal courts seeking remedies based in state law. Here, Petitioner seeks relief from having to pay wage replacement benefits under a state law scheme, thereby seeking a state law remedy. Given the circumstances, the state of Louisiana is an indispensible party and this Petition should be denied based on Petitioner's failure to comply with the rules and the resulting denial of States Rights.

Petitioner has also violated Louisiana Code of Civil Procedure Article 1840, which requires a constitutional question be pled and a contradictory hearing held. The constitutional issues propounded in this Petition were not entertained in the Courts below, as they were deemed to be not properly before those Courts. As expressly stated by the Louisiana Third Circuit Court of Appeal in its Judgment: "To the extent that Vaughan asserts that operation of the workers' compensation statutes is unconstitutional as applied to its situation, we do not consider those claims on review as the claim has not been presented in proper form in proceedings below."[7] As such this Court also lacks jurisdiction to hear this matter and this Writ should be denied.

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[7] Writ of *Cert.* pg. App. 19.

B. PETITIONER HAS NO STANDING TO BRING THIS ACTION.

1. NO CASE OR CONTROVERSY EXISTS OUTSIDE OF LOUISIANA.

Article III of the United States Constitution requires a "case or controversy" specific to these parties be at issue, for this Court's jurisdiction to be invoked. Here, Petitioner's Writ seeks action from this Court to enjoin payment of workers' compensation wage replacement benefits to illegal aliens "in all 50 states." Petitioner alleges no facts to support a finding that a case or controversy exists as to Petitioner in any state other than Louisiana. Therefore the sweeping jurisdictional reach of the Writ as promulgated by Petitioner, cannot be supported by Art. III or United States Supreme Court jurisprudence. Accordingly this Writ should be denied.

2. PETITIONER HAS SUFFERED NO INJURY IN FACT.

In order to have standing to sue in federal court under Article III of the United States Constitution, a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. *See Allen v. Wright, et al.*, 468 U.S. 737, 750 (1984). The Writ contains no facts to assert an injury suffered by Petitioner in any state other than Louisiana, so there can be no injury in fact with regard to the claims on behalf of the remaining 49 states. To the extent the

Petition asserts that the Louisiana Workers' Compensation Act violates the IRCA, Petitioner fails to assert an *injury in fact* caused by the government that will be remedied by a decision in their favor.

Petitioner seeks relief from having to pay a statutory employee wage replacement benefits solely based on the employee's immigration status. Petitioner admits that if Rodriquez was an American citizen, they would owe the wage replacement benefits. It cannot be said that Petitioner has suffered an additional injury solely because of Rodriquez' immigration status, because Petitioner expected to have to pay an injured statutory employee. Petitioner argues that they did not know of Rodriquez' immigration status either at the time that he was hired or during his employment. So, if Petitioner assumed Rodriquez was a "legal" worker and they expected to pay legal workers wage replacement benefits under the LWCA, then Petitioner expected to pay Rodriquez, and therefore has not suffered an injury in fact, and this Writ should be denied.

3. PETITIONER FAILS TO PROVE A CAUSAL CONNECTION BETWEEN INJURY AND CONDUCT COMPLAINED OF.

Petitioner fails to prove a causal connection between the injury – having to pay wage benefits under a state workers' compensation scheme, to an illegal alien – and the conduct complained of, a violation of the IRCA. Additionally, Petitioner cannot

prove that the injury is traceable to the challenged conduct and likely to be redressed by the requested relief. *Id.* at 753.

Petitioner claims that allowing wage benefits under a state workers' compensation scheme to be paid to an "illegal alien" violates the IRCA, because that person could never have been an "employee" because of the IRCA. However, Petitioner would not owe the benefits to an illegal alien if they had not employed him. The "injury" here is traceable to the actions of the Petitioner, not the state workers' compensation scheme. It is quite simple: If the Petitioner does not want to pay workers' compensation to illegal aliens, they need to stop employing them.

This Writ should be denied because it cannot withstand a redressibility analysis. If this Court granted the Writ and performed the requested relief, enjoined payment of wage benefits to illegal aliens under workers' compensation schemes in all 50 states, the effect would likely be an increase in the hiring of illegal aliens, as employers would now be exempt from paying them workers' compensation benefits. There is no evidence that an injury in fact exists or that the requested relief provides the appropriate redress, as such this Writ should be denied.

II. SUBSTANTIVE ARGUMENTS PROHIBITING GRANT OF *CERTIORARI* REVIEW.

A. A SPLIT AMONG STATES ON STATE LAW ISSUE IS NOT "COMPELLING REASON" TO GRANT WRIT.

Petitioners have presented no "compelling reasons" for their Petition for a Writ of *Certiorari* to be granted ("Petition"). *See* S.Ct. R. 10. Specifically, Petitioner fails to demonstrate that the Louisiana Workers' Compensation Act violates the IRCA. Petitioner also fails to establish the importance and/or existence "of a split among the states" with regard to illegal aliens and workers' compensation benefits.

A matter is ripe for consideration by this Court if a split among the Federal Circuits exists as to a federal question. The issue here is who is considered an "employee" for purposes of Louisiana workers' compensation benefits. This is a state law issue, and Petitioner admits such. This Court should not consider issues that are "split" among the different state courts on state law issues. Respondent submits that the "split" attempted to be shown in the Petition is proof of nothing more than states exercising state power, in an area long regulated by the states. A right afforded them by the 10th Amendment of the United States Constitution.

As will be illustrated below, the state and federal courts of Louisiana as well as the Federal Fifth Circuit Court of Appeals in an Eastern District of Louisiana case, all hold that illegal aliens should

receive workers' compensation benefits (or the federal equivalent).

B. THE LWCA IS NOT PREEMPTED BY THE IRCA.

Petitioner's assertion that the Louisiana Workers' Compensation Act is preempted by Federal law, specifically the Immigration Reform and Control Act of 1984 ("IRCA") and therefore operates to deny state workers' compensation benefits to an illegal alien, is not consistent with current U.S. Supreme Court decisions, actions by other states, or recent Federal decisions in Louisiana.

Preemption principles are based on the Supremacy Clause, Art. VI, cl. 2 of the United States Constitution, which states that the U.S. Constitution and the laws of the U.S. are the "supreme law of the land."

In *De Canas v. Bica*, the United States Supreme Court articulated three tests to determine whether federal law preempts a state or local statute relating to immigration.[8] The tests for determining preemption are:

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[8] *See De Canas v. Bica*, 424 U.S. 351, 354-55 (1976) ("Power to regulate immigration is unquestionably exclusively a federal power.").

1. **Constitutional preemption:** Is the state or locality attempting to regulate immigration?

2. **Field preemption:** Did Congress intend to occupy the field and oust state or local power?

3. **Conflict preemption:** Does the state or local law stand as an obstacle to or conflict with federal law, making compliance with both the state and federal law impossible?

A state statute or local ordinance that fails any one of these three tests is preempted by federal law, is unconstitutional, and is therefore invalid.[9]

1. THE LWCA IS NOT CONSTITUTIONALLY PREEMPTED BY THE IRCA.

A state or local law will be constitutionally preempted by federal law where the state law attempts to "regulate" immigration. This Court in *De Canas* explained that the regulation of immigration implicates exclusively federal concerns, including foreign policy, the maintenance of uniform rules of commerce and for acquiring U.S. Citizenship, respect for treaties and concern for reciprocity in the

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[9] *Id.*

treatment of U.S. citizens abroad, and defense in time of war.[10]

As Petitioner has accurately stated, the LWCA does not address illegal aliens, alien status, or compensation of benefits to illegal aliens. Statutes that have been struck for being constitutionally preempted contained provisions regarding verification, notification and cooperation or reporting requirements of a person's immigration status by a state or local agency, in an attempt to directly "regulate" immigration by "creating a comprehensive scheme to detect and report the presence and effect the removal" of undocumented immigrants.[11]

Consequently, the LWCA does not purport such "regulation," as it does not reference immigration status at all, and therefore it is not constitutionally preempted by the IRCA.

B. THE LWCA IS NOT FIELD PREEMPTED BY THE IRCA.

Likewise, a state or local statute is field-preempted if it is an attempt to legislate in a field

[10] *Id.*

[11] A federal court found unconstitutional a California law, Proposition 187; that required state and local agencies to (1) verify immigration status; (2) notify certain individuals of their immigration status; (3) report individuals to state and federal authorities and (4) deny those individuals health care, social services, and education.

that is occupied by the federal government. This analysis requires an assessment of whether the state or local statute is attempting to legislate in a field in which Congress intended a "complete ouster" of state power, even if that state or local statute does not conflict with federal law.[12] The U.S. Supreme Court has held through a series of cases, that immigration law is one area in which the federal government has comprehensively legislated and fully occupied the field.[13]

Specifically, it has been held that the employment and hiring of unauthorized workers is an area that is expressly preempted by federal immigration law. The language of the federal statutes provide this field occupation, so it is unnecessary to further probe Congress' intent to occupy this field.[14] For example, where an ordinance creates a separate scheme for reporting and investigating violations of immigration law or would create a separate state system for determining immigration status, the ordinance would be preempted because the state or locality would be operating in a field occupied by Congress.[15]

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[12] *De Canas*, 424 U.S. at 356-57.

[13] *Id.* at 357.

[14] The IRCA includes employer sanction provisions and preemption language. 8 U.S.C. § 1324a(h)(2) expressly preempts any state or local law from imposing civil or criminal sanctions (other than through licensing) upon those who employ, or refer or recruit for a fee employment, unauthorized aliens.)

[15] *LULAC v. Wilson*, 908 F. Supp. 755 (C.D.Cal. 1995).

Similarly, to the constitutional preemption analysis, the LWCA is not field-preempted because the statute does not purport to create a separate state system for determining immigration status for employees. As repeatedly stated by Petitioner the LWCA is silent as to immigration status and therefore cannot be held to be field-preempted by the IRCA, as it does not involve immigration issues at all.

3. THE LWCA IS NOT CONFLICT PREEMPTED BY THE IRCA.

Where a state or local statute (1) burdens or conflicts "in any manner with any federal laws or treaties" or (2) stands "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" it will be struck as a conflict preemption of federal law. The Supreme Court has held that federal objectives are impeded when statutes "interfere with the methods by which the federal statute was designed to reach [a] goal."[16]

Here, the LWCA is not conflict preempted as it does not purport to interfere with the methods set forth by the IRCA. The LWCA does not establish a scheme for dealing with immigrant workers, it does not impose additional requirements or regulations for immigrant workers, it is silent as to alien status. Ironically, if Petitioner's requested relief is granted, our state workers' compensation administrative law

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[16] *LULAC*, 908 F. Supp. at 768.

judges will be in a position to question and/or determine alien status prior to determining workers' compensation benefits; that is the exact type of action or scheme that has been found to be preempted in other states.[17]

The purpose of the IRCA is to penalize unscrupulous employers who seek to benefit from employing undocumented workers.[18] Petitioner provides no evidence that the LWCA interferes with or impedes this purpose. Therefore, the IRCA does not conflict preempt an award of workers' compensation benefits to an undocumented worker "illegal alien" under the LWCA.

a. THE *HOFFMAN* CASE IS *NOT* CONTROLLING ON THE ISSUE OF WORKERS' COMPENSATION BENEFITS.

Petitioner relies on the *Hoffman* case as evidence of IRCA's preemption over LWCA.[19] This reliance has been found by other Courts, as well as by the Eastern

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[17] A federal court found unconstitutional a California law, Proposition 187, that required state and local agencies to (1) verify immigration status; (2) notify certain individuals of their immigration status; (3) report individuals to state and federal authorities and (4) deny those individuals health care, social services, and education.

[18] *Farmers Brothers Coffee v. Workers' Compensation Appeals Board*, 133 Cal. App. 4th 533 (2005).

[19] *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002).

District of Louisiana and the U.S. Court of Appeals for the Fifth Circuit, in the *Bollinger* case, to be misplaced with regard to workers' compensation benefits to illegal aliens.[20] The trial Court and the Louisiana Third Circuit Court of Appeals recognized this distinction in their Reasons for Judgment subsequently rejecting Petitioner's *Hoffman* argument. The trial Court also noted that the continued silence of the Louisiana Legislature in this area is an indication that it has opted not to regulate in this area.

This Court in *Hoffman* held that the IRCA preempted a provision of the National Labor Relations Act ("NLRA") that awarded back pay for persons wrongfully terminated in violation of NLRA regulations. The Court referenced provisions of the Act that purported to impose additional or different schemes or systems of areas critical to federal immigration policy. In effect the NLRA attempted to dictate immigration policy, and as such was preempted by the IRCA.

Also, the *Hoffman* Court noted that both the employer and the employee violated provisions of the IRCA; the employer by hiring an illegal alien and the employee by tendering false documentation. This is distinguishable from the instant case, because Rodriquez did not provide false documentation, and did not

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[20] *See, Bollinger Shipyards, Inc. v. Director, Office of Workers' Compensation Programs, US Department of Labor, et al.*, 604 F.3d 864 (5th Cir. 2010).

violate the IRCA, as the *Hoffman* employee did. The *Hoffman* case is also distinguishable from the present case in that the LWCA is not creating a separate system for immigrants (it does not even mention them) and because the State of Louisiana has vested police power in regulating its workers' compensation system.

The NLRA is a federal statute governing federal employment regulations; where they overlap the NLRA is preempted by the IRCA. However the LWCA is a state workers' compensation statute. The 10th Amendment to the U.S. Constitution reserves in the states all powers not expressly enumerated by the federal government. Workers' Compensation is such an area. The federal courts will not hear a state workers' compensation issue. No federal workers' compensation statute exists that purports to govern state workers' compensation.

Therefore, the regulation of workers' compensation is a matter for the states and a state's workers' compensation statute will not be held in conflict with the IRCA, because the IRCA's goal is to regulate employers and workers' compensation is for the benefit of the employees.

Accordingly, the *Hoffman* case has no bearing on workers' compensation issues, and is therefore not controlling as evidence of preemption of theLWCA. The Court in *Bollinger* reached the same analysis, holding that the *Hoffman* case does not apply to the Longshore and Harbor Workers' Compensation

Act ("LHWCA") for the reasons previously stated in this response.

b. PETITIONER EXCLUDES THE *BOLLINGER* OPINION FROM THE PETITION.

Petitioner neglects to provide this Court with the *Bollinger* case, decided by the U.S. Fifth Circuit Court of Appeals, holding that payment of wage benefits under the LHWCA are not preempted by the IRCA. The Court in *Rollinger* noted that wage payments made under the LHWCA were in lieu of the right to sue in tort and that it has long been recognized that illegal aliens have the right to sue in both contract and tort. The Fifth Circuit quoted this Court in stating "the LHWCA represents a compromise between the competing interests of disabled laborers and their employers."[21]

The same arguments apply to the present case. In Louisiana, workers' compensation benefits are an injured worker's exclusive remedy; meaning an injured worker cannot sue his employer in tort for an injury falling under the Louisiana Workers' Compensation Act. The benefits under the LWCA are provided without consideration of fault for either the

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[21] *Id.* at 877, *quoting Potomac Elec. Power Co. v. Director, OWCP*, 449 U.S. 268, 282, 101 S.Ct. 509, 66 L. Ed. 2d 446 (1980).

injured employee or the employer. The *Bollinger* Court noted that taking away this statutory remedy does not further the purpose of the IRCA in any way. In fact, the Court noted that the receipt of this type of benefit continues even after a work relationship dissolves between the parties; something the IRCA does not contemplate or regulate.[22]

The *Bollinger* case provides extensive analysis of this Court's decision in the *Hoffman* case and holds that the IRCA does not preempt an award of wage benefits under the LHWCA. Similarly, the same reasoning and arguments preclude a finding of preemption against the LWCA. Accordingly, this Writ should be denied.

C. POLICY CONSIDERATIONS PREVENT GRANT OF *CERTIORARI* REVIEW.

1. PETITIONER VIOLATED THE IRCA AND NOW SEEKS PROTECTION UNDER IT.

It is against public policy to provide relief in a situation where the Petitioner has violated the very law they seek protection under. Here, Vaughan admits that they owe workers' compensation benefits, except for the fact that Rodriquez is an undocumented worker. However, the IRCA sets forth an affirmative

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[22] *Id.* at 878.

duty for all employers to verify employee documentation. At the trial level Vaughan unsuccessfully argued that its contract with Jason Stanton, a subcontractor and Rodriquez' direct employer alleviated its duty to inquire as to the subcontractor's employees immigration status. This is simply not true.

IRCA § 1324a(a)(i)(B)(4), Use of Labor Through Contract, states:

> For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

It is clear the IRCA establishes in Vaughan an affirmative duty to employ properly documented workers. The IRCA also vests Vaughan with a "good faith" duty in reliance upon said contract. Section 1324a(a)(i)(B)(3) states:

> A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) of this section with respect to the hiring, recruiting, or referral for employment of an alien in the United

States has established an affirmative defense.[23]

Vaughan is asking this Court to rule that an employer who violates a federal law, the IRCA, and hires an undocumented worker should not have to pay workers' compensation to that worker, because the law prevented him from being an employee in the first place. Aside from the procedural obstacles and the substantive legal issues, this argument should fail for policy reasons.

Our system of laws is the woven fabric that guides our actions. Where they intersect and begin to fray, federal law will prevail. However, where similar concepts run parallel through state and federal systems they will be allowed to stand. At no time should a party be allowed to violate a federal law and use such violation to the denigration of a state law. Our Constitution provides for the maintenance and integrity of both federal and state systems, to allow Petitioner to prevail is to make a mockery of longstanding states' rights.

2. UNDOCUMENTED WORKERS WOULD BECOME A TARGETED EMPLOYMENT FORCE IF PETITIONER PREVAILS.

If Petitioner's relief is granted, employment of undocumented workers or "illegal aliens" will rise in

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[23] *Id.*

all 50 states. While workers' compensation is a state law issue, all states deal with the problem of non compliance and under insuring to the detriment of the entire workforce of each state. Ceasing payment of workers' compensation benefits to undocumented workers would act as an incentive to employers to hire more illegal aliens.[24] If employers are allowed to utilize undocumented workers and not have to pay workers' compensation when they are injured, those workers become expendable and the system becomes unbalanced. Accordingly, this Writ should be denied.

3. SHIFTING THE BURDEN TO STATE FUNDED HOSPITAL SYSTEMS IS NOT A VIABLE OPTION.

If Petitioner's relief is granted the burden of paying for undocumented injured workers will rest on state-run or charity medical systems, as well as federally funded aid programs; systems that are already over-run and under-funded. The current system of providing workers' compensation benefits to undocumented workers in Louisiana keeps the burden where it is expected. Vaughan expected to have to pay workers' compensation to an injured employee. That employee should not become the burden of the taxpayers. Petitioner's Writ should be denied, as the

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[24] *See Asylum Co. v. D.C. Dep't of Empl. Servs.*, 2010 D.C. App. LEXIS 732 (decided December 23, 2010, pending publication).

relief requested creates undue burden for taxpayers and a windfall to employers.

CONCLUSION.

This Petition for Writ of *Certiorari* should be denied as Petitioner has no standing to bring this action; Petitioner failed to follow Notice guidelines; and these issues were not properly considered before the lower Courts. This Petition should also be denied on substantive legal grounds. The IRCA does not preempt an award of workers' compensation benefits to an undocumented worker "illegal alien" under the Louisiana Workers' Compensation Act. To rule that it does, violates public policy and creates an incentive for the hiring of illegal aliens, the very action the IRCA seeks to prevent. Finally if Petitioner prevails, Administrative Law Judges will be put in the position of having to make a finding of whether or not injured workers seeking benefits are "illegal." Such determinations by state agencies have already been held to be preempted.

Respectfully submitted,

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